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Attorneys for Plaintiff  
NEXTEC APPLICATIONS, INC.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NEXTEC APPLICATIONS, INC., a Georgia  
corporation,

Plaintiff,

v.

BROOKWOOD COMPANIES, INC., a  
Delaware corporation,

Defendant.

Case No. 07CV6901 (RJH)(THK)

**DECLARATION OF JON E. MAKI  
IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANT'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT UNDER 28 U.S.C. 1498(a)**

**DECLARATION OF JON E. MAKI**

I, Jon E. Maki, say and declare:

1. I am an attorney duly admitted *pro hac vice* before this Court and counsel for plaintiff Nextec Applications, Inc. in the above-captioned matter. I make the following statements of my own personal knowledge and would and could testify thereto if sworn as a witness at trial.

2. Attached hereto as Exhibit A is a true and correct copy of the subpoena to ADS, Inc. *aka* Atlantic Diving Supply (“ADS”) including deposition and document requests served on May 28, 2008.

3. Attached hereto as Exhibit B is a true and correct copy of the subpoena Proper International (“Propper”) including deposition and document requests served on May 29, 2008.

4. Attached hereto as Exhibit C is a true and correct copy of the subpoena DJ Manufacturing Corp. (“DJ”) including deposition and document requests served on May 29, 2008.

5. Attached hereto as Exhibit D is a true and correct copy of the subpoena served on Sterlingwear of Boston (“Sterlingwear”) including deposition and document requests on May 24, 2008.

6. Attached hereto as Exhibit E is a true and correct copy of the subpoena served on ORC Industries (“ORC”) including deposition and document requests on May 23, 2008.

7. Since service of the above referenced subpoenas, I have been in contact with a representative of or counsel for each of the subpoenaed third parties.

8. Sterlingwear representative David Fredella has appeared for deposition pursuant to the subpoenas on July 21, 2008. Sterlingwear also produced some documents and is expected to produce additional documents as a result of deposition questioning.

9. ORC has produced some documents but the company and its counsel were unavailable for deposition on the noticed date. ORC's counsel, Mr. Mark Tilkens is also currently engaged in a two to three week trial which is expected to end in the first or second week of August.

10. DJ has filed a motion to quash and/or motion for protective order in the District Court for the district of Puerto Rico which was denied. On or about August 11, 2008, DJ produced documents in response to the subpoena.

11. ADS has objected to the scope of the requests and I have met and conferred with ADS' counsel, Gary Nunes, in an effort to reach a mutually agreeable scope. We have not yet reached such an agreement and ADS has not produced any documents or appeared for deposition pursuant to the subpoena. It now appears that a motion to compel may be necessary to secure documents necessary from ADS.

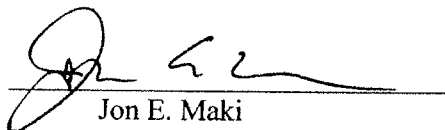
12. Propper has objected to the scope of the requests and I have met and conferred with Propper's counsel, Bryan Kaemmerer, in an effort to reach a mutually agreeable scope. We have not yet reached such an agreement. It now appears that a motion to compel may be necessary to secure documents necessary from Propper.

13. Attached hereto as Exhibit F is a true and correct copy of the deposition notice served on or about August 5, 2008 by Brookwood in the case.

14. Attached hereto as Exhibit G is a true and correct copy of Nextec's objections, served on or about August 7, 2008, to Brookwood's deposition notice to ADS.

15. A deposition of an ADS representative took place on August 14, 2008 (one day for Nextec's opposition is due) but the transcript from that deposition is not available as of the date of this declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 15, 2008, at San Diego, California.

  
Jon E. Maki